IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10531 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NILESHKUMAR VINODBHAI MISTRY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10531 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/02/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application under Article 226 of the Constitution of India, the

petitioner has challenged his detention order passed against him by District Magistrate, Bharuch, on 08th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short) directing detention of present petitioner as bootlegger within the meaning of the PASA Act. The petitioner came to be detained in pursuance of the said order from 08th of August, 2004.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials in passing of the order of detention against the petitioner. Firstly, the two crimes registered against the petitioner and secondly two in-camera statements of the witnesses. Two crimes one before Bharuch City 'B' Division Police Station on April 06, 2004, and second before Mangrol Prohibition Police Station, Surat, on 3rd of July, 2004, came to be registered against the petitioner under the Bombay Prohibition Act, whereby it was alleged that the petitioner was found in possession of some quantity of foreign liquor. The detaining authority thoroughly examined the investigation papers in both the above cases The detaining authority relied upon two in-camera statements as recorded by sponsoring authority on July 12, 2004 and July 15, 2004 as verified by Deputy Superintendent of Police on 29th of July, 2004 and by detaining on August 5th of 2004. Out of these two statements, one witness referred to an incident occurred on July 8, 2004 at about 7.30 p.m. when, with his passenger rickshaw, the witness was standing near rickshaw station, the petitioner along with his two accomplices approached the witness and after determining hire charges of Rs.25/- the rickshaw was taken near Hansraj Ashram where one person with Honda Bike Motorcycle was standing. Seeing this, the witness tried to turn his rickshaw and tried to escape, but the petitioner and his accomplices did not allow the witness to do that, and the witness was dragged out of the rickshaw and was beaten. The witness was put into danger with some weapon like revolver and was directed to keep mum. There, near bushes, five bottles of foreign liquor were concealed, which were taken out and placed in the rickshaw. Thereafter two accomplices of the petitioner took out the rickshaw from there. The witness was made to wait at that place for about one and half hours and thereafter he was freed. At that time, he was threatened that though rickshaw would be kept at Polan Road, but if he tried to inform the police, he would be done to death. On account of fear of the petitioner, the witness did not

file any complaint before the Police. The second witness referred the incident occurred on June 27, 2004 and it being a Sunday, for his social work, the witness had gone towards Vejalpur at about 6.00 p.m. At about 8.00 p.m. while he was returning near Parsiwad, the petitioner and his 4/5 accomplices were stationed in one Tata Sumo car. Accomplices of the petitioner were taking out crates of foreign liquor quickly and witness watched them to go towards Parsiwad. At that time, the petitioner accosted the witness and asked them why the witness was passing through there. The witness objected about he being stopped there. The petitioner stated that the witness would have to wait till the crates of the liquor are emptied, but the witness anyhow managed to escape. Due to fear of the petitioner, the witness did not prefer any complaint before the police.

3. From the above material, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor. The detaining authority also came to the conclusion that the activities of the petitioner was prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority also came to the conclusion that the activities of the petitioner was required to be prevented forthwith. The detaining authority after taking into consideration other remedies available against the petitioner in genera law, came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act and hence the detaining authority passed the order of detention against the petitioner which is under challenge in this petition.

4. Learned Advocate Mr.M.R. Prajapati for the petitioner and learned AGP Mr.H.M. Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner the public order was disturbed and public health was adversely affected.

6. To arrive at the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the

detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. In this exercise, the detaining authority must draw a line between the cases falling under "breach of law and order" and breach of public order. The detaining authority also must determine the fall out, reach and impact of the activities of the petitioner which determines whether potentiality of the activities alleged, was capable of disturbing the public order. Referring to the two cases filed against the petitioner under the Bombay Prohibition Act and going through the investigating papers, it clearly appears that those cases came to be filed against the petitioner because he was found in possession of some prohibited liquor in breach of Prohibition Act. Those cases are pending and the petitioner shall be tried and may be punished as well, if found guilty, but it is clear that through the investigating papers on which the detaining authority has placed reliance do not disclose such activities of the petitioner, impact of which would disturb the larger section of the society or put the public health in danger. At the most, these cases may be considered to be breach of law, for which, as aforesaid, the petitioner will be dealt with according to law. Therefore, the act constituting criminal offences registered against the petitioner in dealing with prohibited liquor, have no bearing at all on the question of maintenance of public order.

7. The other material which the detaining authority relied upon is in the form of two in-camera statements. While going through these statements, it clearly appears that the incidents narrated in those statements were more individual disputes than to involve society at large or disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, from the bare reading, do not disclose capability to disturb the public order nor any widespread danger to society or harm the public health could be inferred from the above statements. These also may be instances of disturbing of law and order and not the public order.

8. In view of the above matter, it clearly appears that there was no credible or cogent material before the detaining authority to come to the conclusion that by the activities of the petitioner public order was disturbed

or public health was adversely affected. The order under challenge, therefore, is required to be quashed on this ground alone.

9. In the result, the petition is allowed. The order passed by the District Magistrate, Bharuch, on 8th of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Nileshkumar Vinodbhai Mistry is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted to Baroda Jail because as per the statement of learned Advocate for the petitioner the detenu is kept at present at Baroda Jail.

(J.R.Vora, J.)

p.n.nair